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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
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09/172,853 10/15/98 DUPUIS

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HM12/0510
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EXAMINER

WEBMAN, E

ART UNIT

PAPER NUMBER

1617

DATE MAILED:

05/10/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/172853

Applicant(s)

DuPuis

Examiner

W. G. Man

Group Art Unit

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—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 1/13/00
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 25-67 is/are pending in the application.
- Of the above claim(s) 25-42, 63 is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 43-62, 64-67 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) _____
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 7, 8, 12
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 43-62, 64-67 are rejected under 35 U.S.C. 103(a) as being unpatentable over EPA 590604 in view of Sramek and ^{hem}Cohen, Abstract 117946 ('546).

Applicants stipulate that "604 teaches the claimed "acrylates" copolymer (page 7 first two paragraphs), '604 teaches freeze-thaw stability in hairsprays (Abstract).

Sramek teaches an aerosol composition containing hair setting resins (Abstract). Hair setting resins which are acrylic polymers containing such monomers as methacrylic acid, hydroxymonoesters of methacrylic acid with C2 glycol, methyl methacrylate, and butyl acrylate are specified (column 4 line 53 - 58, column 4 line 68 - column 5 lines 2-5). Sramek also teaches alcohol and water (column 5 lines 59-65), water soluble cosmetically acceptable basic compounds, including AMP (column 9 lines 22-34), perfumers, protein hydrolysates, preservatives, and silicones (column 9, lines 47-56), the last disclosed by applicant as a conditioning agent on page 30 second paragraph.

'546 teaches a hair setting polymer comprising C2-8 alkyl acrylates, methylmethacrylate, hydroxyethyl-methacrylate and methacrylic acid. High effectiveness and water resistance are disclosed.

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It ^{u ha been} ~~would~~ be obvious to one of ordinary skill to add the polymer of '604 to the composition of Sramek to impart freeze-^{aw}~~then~~ resistance and to use the polymer of '546 as a hair setting polymer in view of its high effectness and water resistance. As to the claimed 41% aqueous dispersion of the hydroxyacrylate, applicants disclose such is an item of commerce (example 6, page 39).

Applicant's election with traverse of claims 43-62, 64-67 in Paper No. 11 is acknowledged. The traversal is on the ground(s) that the examiner ^hwas not provided reasons for distinctness nd~~are~~ burden. This is not found persuasive because for an election of species such need not be provided. Applicants need only state on the record that the species are not patentably distinct to avoid the requirement.

The requirement is still deemed proper and is therefore made FINAL.

The election of species has not been reformulated because claims 43-62, 64-67 would merely have been reclassified as another species of ionic polymer for applicants to elect.

No claims allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward J. Webman, whose telephone number is (703) 308-4432. The examiner can normally be reached on M-F from 9:00 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, M. Moezie, can be reached on (703) 308-0570. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3592.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

E. Webman:jmr

May 02, 2000



EDWARD J. WEBMAN
PRIMARY EXAMINER
GROUP 1500